



Bill Summary

H.R. 5811: The Electronic Communications Preservation Act

Rep. Henry A. Waxman

Chairman, Committee on Oversight and Government Reform

Investigations by the Oversight Committee have revealed significant deficiencies in the preservation of e-mail by the White House and federal agencies. H.R. 5811, introduced on April 15, 2008, by Reps. Waxman, Clay, and Hodes, modernizes the requirements of the Presidential Records Act and the Federal Records Act to ensure that these vital records are preserved for historians.

Preservation of Presidential Records

Under President Bush, the White House may have lost millions of e-mails. Committee investigations have revealed that numerous White House officials — including Senior Advisor Karl Rove — used e-mail accounts maintained by the Republican National Committee, which regularly deleted the e-mails from its servers. In addition, the White House cannot account for hundreds of days worth of official White House e-mails sent and received between 2003 and 2005. At the time of these losses, the White House used an e-mail archiving system that a former White House information technology officer described as "primitive."

To ensure the retention of these important records, H.R. 5811 directs the Archivist of the United States to establish standards for the capture, management, and preservation of White House e-mails and other electronic communications. Under the legislation, the White House must use an e-mail preservation system that enables electronic retrieval of e-mails and certify that the system meets the requirements established by the Archivist. The bill requires the Archivist to certify annually whether the records management controls established by the President meet these standards.

Electronic Preservation of Federal Records

Under current law, federal agencies have broad discretion to determine how electronic records and electronic communications are preserved. Committee investigations and the Government Accountability Office have found that many agencies rely on unreliable "print and file" systems for preserving electronic records, including e-mails. As a result, many e-mails that should be saved as federal records may be lost.

H.R. 5811 directs the Archivist to issue regulations requiring agencies to preserve electronic communications in an electronic format. These regulations must cover, at a minimum, the capture, management, preservation, and electronic retrieval of electronic communications. In addition, the Archivist would be required to establish testing and certification standards for any electronic records management systems implemented at agencies. The Archivist is given 18 months to promulgate the regulations. Agencies will have no more than four years following enactment of the Act to comply.